

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2339

O'Quinn v. Trustees UMW  
(Williams)

ERISA. Whether substantial evidence supported trustee's  
determination that appellant was not in a mine accident.

06-1249

Blankenship v. Manchin  
(Copenhaver)

FIRST AMENDMENT. Whether governor is entitled to qualified  
immunity in suit alleging retaliatory action based on  
protected speech; does objective standard apply to  
determine whether rights adversely affected.

06-1036

Sucampo Pharmaceutic v. Astellas Pharma  
(Messitte)

CONTRACT. Whether Japanese forum selection clause included  
in one agreement between the parties applies to dispute  
arising under a separate agreement.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
9:30 a.m.

TUESDAY, OCTOBER 24, 2006

REVD 10/6/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

05-2308 (L), 06-1040  
Giovani Carandola v. Fox  
(Tilley)

05-2266  
Christopher Phelps v. Galloway  
(Mullen)

06-1058  
American Roll-On v. P&O Ports Baltimore  
(Quarles)

NATURE OF CASE

FIRST AMENDMENT. Whether North Carolina statutes regulating sexual conduct in establishments that sell alcohol are unconstitutionally overbroad and vague.

COPYRIGHT INFRINGEMENT. Should permanent injunction issue upon finding of infringement; evidentiary and jury instruction issues regarding amount of profits recoverable.

MARITIME. Whether statute of limitations in COGSA and in bill of lading applies to negligence claim and indemnification claim under stevedoring contract; other issues.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

TUESDAY, OCTOBER 24, 2006

REVD 10/6/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

05-4397 (L), 05-4398  
US v. Joshua Brent Gray  
(Goodwin)

06-1819  
Child Evangelism SC v. Anderson School Dist  
(Herlong)

05-4439  
US v. Jack Earl Best  
(Howard)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether Askew has standing under the Fourth Amendment to contest the search of Gray's home; other issues.

CONSTITUTIONAL LAW. Whether school district's facilities usage policy violated the plaintiff's First and Fourteenth Amendment rights by contravening the Establishment Clause and the plaintiff's rights to free speech, free exercise of religion, and equal protection.

CRIMINAL. Whether the district court should have compelled the government to file a motion for a downward departure because of the defendant's substantial assistance; other issues.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

TUESDAY, OCTOBER 24, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1995

Gilliam v. SC Dept of Juvenile  
(Anderson)

TITLE VII. Timeliness of hostile work environment claim;  
other issues.

05-2054

Wadley v. Experian Info Sol  
(Lee)

CIVIL. Whether 15 U.S.C. Section 168i only requires  
reinvestigation if credit report is inaccurate; other  
issues.

06-1187

Washington Metrop v. Potomac Invest Prop  
(Messitte)

CONTRACT. Whether language of right of first refusal agree-  
ment and ground lease agreement clearly establishes  
parties' rights following cancellation of lease agreement;  
if not, was evidence sufficient to establish intent; merger  
by deed and novation issues.

05-2286

Rogers v. Barnhart  
(Stamp)

SOCIAL SECURITY. Whether claimant was not disabled because  
his self-employment permitted him to modify his work routine  
to accommodate his physical limitation. 15 mins. per side

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
9:30 a.m.

TUESDAY, OCTOBER 24, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

04-2447  
Jennings v. UNC  
(Tilley)

NATURE OF CASE

Rehearing en banc.

WEDNESDAY, OCTOBER 25, 2006

COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:00 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

04-4682  
US v. Richard Guyon  
(Boyle)

05-4906  
US v. Glenn A. McClung  
(Goodwin)

06-1009  
Goodman v. Praxair Inc  
(Garbis)

NATURE OF CASE

SENTENCING. Whether upward departure under U.S.S.G. Section 4A1.3 violated United States v. Booker, 543 U.S. 220 (2005).

CRIMINAL LAW & PROCEDURE. Whether the district court's failure to give notice before imposing a variance sentence above the advisory guideline range constitutes plain error.

CIVIL. Whether addition of party triggers "relation-back" provisions of Fed. R. Civ. P. 15(c)(3) for statute of limitations purposes; other issues.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
Beginning at conclusion  
of en banc rehearings

WEDNESDAY, OCTOBER 25, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1525

Taylor v. Progress Energy Inc  
(Howard)

Panel rehearing.

06-6266 (L), 06-6296

Madison v. Commonwealth of VA  
(Turk)

RLUIPA. Whether Section 3 of the Act is a valid exercise of congressional power under the Spending Clause; whether waiver of sovereign immunity upon acceptance of federal funds is a valid statutory requirement; other issues.

05-4967 (L), 05-4976 05-4978 05-4992 05-5055 05-5059 05-5074

US v. Diaz-Calderon  
(Brinkema)

CRIMINAL LAW & PROCEDURE. Various issues, including sufficiency of the evidence; appropriateness of venue; and appeal and cross-appeal of drug quantity determinations.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
Beginning at conclusion  
of en banc rehearings

WEDNESDAY, OCTOBER 25, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2181

Haoua v. Gonzales

IMMIGRATION. Whether substantial evidence supports the finding that petitioner did not establish she could relocate and avoid persecution.

05-2159

Standard Life v. Dewberry & Davis LLC  
(Lee)

INSURANCE. Challenge to summary judgment on claims by insurer that nondisclosure and misrepresentation by insured voided reinsurance coverage.

05-2421

Bockou Essohou v. Gonzales

IMMIGRATION. Whether government rebutted presumption of well-founded fear of persecution based on past persecution; humanitarian asylum.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
Beginning at conclusion  
of en banc rehearings

WEDNESDAY, OCTOBER 25, 2006



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

03-7508

US v. Hadden  
(Currie)

CRIMINAL LAW & PROCEDURE. Whether district court erred in issuing an amended judgment and reimposing sentence without holding a sentencing hearing; whether appellant is entitled to benefit of Booker on appeal of that amended sentence.

05-2050

Catawba Indian Tribe v. City of Rock Hill  
(Currie)

CONSTITUTIONAL LAW. Whether enactment of ordinance and imposition of impact fees violated the Contract Clause.

05-2170

Zinkand v. Brown  
(Mutz)

CIVIL. Whether district court erred in applying judicial estoppel where defendant had good faith belief that his Alford plea to resisting arrest would not preclude his right to have civil action for excessive force be heard by jury; other issues.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
Beginning at conclusion  
of en banc rehearings

WEDNESDAY, OCTOBER 25, 2006

UNITED STATES COURT OF APPEALS  
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NUMBER AND STYLE

NATURE OF CASE

06-7  
Shuler v. Ozmint  
(Seymour)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

06-1281  
Johnson v. Caudill  
(Jones)

CIVIL RIGHTS. Whether sheriff is entitled to qualified immunity in Section 1983 employment discrimination case; issues relating to statute of limitations and scope of jurisdiction on interlocutory appeal.

05-2283  
Peter v. Gonzales

IMMIGRATION. Whether petitioners were deprived of due process when Immigration Judge sua sponte vacated prior order to reopen; other issues.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 26, 2006

REVD 10/6/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2263

Ayes v. US Dept of Veterans  
(Britt)

BANKRUPTCY. Whether Secretary of Veterans Affairs violates non-discrimination provision of 11 U.S.C. Section 525(a) by requiring veteran to repay loss on prior loan discharged in bankruptcy before issuing new loan under home loan guaranty program, 38 U.S.C. Section 3701.

05-1613

Korotynska v. Metropolitan Life  
(Motz)

ERISA. Standing, breach of fiduciary duty and availability of equitable relief.

05-5165

US v. Jose Medina, Jr.  
(Quarles)

SENTENCING. Whether variance sentence substantially below the advisory guideline range was reasonable.

05-5243

US v. Charles Jones, III  
(Stamp)

CRIMINAL LAW & PROCEDURE. Whether defendant's belief about victim's age is an element under 18 U.S.C. Section 2423(a); whether prosecutor's closing remarks amounted to reversible error.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 26, 2006

UNITED STATES COURT OF APPEALS  
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(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4770

US v. Quang The Nguyen  
(Brinkema)

SENTENCING GUIDELINES. Whether district court exceeded its post-Booker discretion by departing more than 60% from bottom of applicable guideline range based upon youth, participation level and possible deportation.

06-4190

US v. William Byron Bowman  
(Kiser)

SENTENCING. Whether the district court relied on extraneous information to find appellant was an Armed Career Criminal under 18 U.S.C. Section 924(e); other issues.

05-2250

Miller v. Prince George's Cnty  
(Titus)

CIVIL. Liability for and entitlement to qualified immunity for false information in arrest warrant application.

05-2057 (I), 05-2058

Adkins v. Crown Auto Inc  
(Kiser)

FRAUD. Whether plaintiff's proof regarding reliance and damage was sufficient to support jury verdict; whether punitive damages issue should have been submitted to the jury.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 26, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-14

Emmett v. Kelly  
(Moon)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

05-5276

US v. Jamar D. Robinson  
(Perry)

SENTENCING. Whether sentence was unreasonable when district court rejected role enhancement that was not charged in the indictment.

05-4199 (L), 05-4200 05-4259

US v. Kenneth Mitchell  
(Blake)

CRIMINAL LAW & PROCEDURE. Multiple allegations of error arising from trial of defendants on drug conspiracy charges.

06-1204

NLRB v. Leading Edge

LABOR. Whether substantial evidence supports finding of NLRB that job opening existed and that company was motivated not to hire individual by anti-union animus.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 26, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
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(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

05-2384 (L), 05-2419 05-2420  
McGirt v. Gulf Insurance Co  
(Titus)

NATURE OF CASE

INSURANCE. Liability of insurers under MCS-90 endorsements  
where motor carrier and its insurer are insolvent.

AFTERNOON PANEL  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
2:30 p.m.

THURSDAY, OCTOBER 26, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4018  
US v. Keith A. Hargrove  
(Hudson)

SENTENCING. Whether the district court erred in refusing to grant a reduction for acceptance of responsibility; other issues.

05-5024 (L), 05-5025  
US v. Jason R. Pearson  
(Hudson)

CRIMINAL LAW & PROCEDURE. Sufficiency of the evidence; 404(b) evidence; other issues.

05-5029  
US v. Dominguez-Yanes  
(Beaty)

SENTENCING GUIDELINES. Whether two-level increase for possession of dangerous weapon during drug offense was clearly erroneous, USSG Section 2D1.1(b)(1).

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
\*\* 8:15 a.m. \*\*

FRIDAY, OCTOBER 27, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/24/2006 - 10/27/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4122

US v. Ramona Obera Tucker  
(Herlong)

CRIMINAL LAW & PROCEDURE. Whether variance sentence almost five times higher than top of guideline sentencing range was reasonable.

06-4087

US v. Randy Edward Hayes  
(Keeley)

CRIMINAL LAW & PROCEDURE. Whether indictment properly charged that prior battery conviction was a misdemeanor crime of domestic violence.

03-4297 (L), 03-4298

US v. David Harris  
(Legg)

FOURTH AMENDMENT. Whether search warrant for residence and vehicle was supported by probable cause; other issues.

05-6640

Igwebuike v. Caterisano  
(Chasanow)

IMMIGRATION. Jurisdiction issues involving adjustment of status determination.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
8:30 a.m.

FRIDAY, OCTOBER 27, 2006